IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 9 of 2007

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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RAJ MATA RUBBER PRODUCTS - Appellant
Versus
O.L. OF MACCAS GENERAL FOODS PVT. LTD.
AND OTHERS - Opponents

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Appearance :
MR NEERAJ J VASU for the Appellant.
MR DIPEN C SHAH for the Appellant.
OFFICIAL LIQUIDATOR for the Opponent : 1.
None for Opponents : 2 - 3.

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 23/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

1. Raj Mata Rubber Products – appellant has challenged in this appeal, the judgment and order dated 12-12-2006 passed by the learned Company Judge in Miscellaneous Civil Application No. 244 of 2006 in Official Liquidator's Report No. 60 of 2006, whereby the learned Company Judge rejected the application.

2. It appears from the judgment and order dated 12-12-2006 passed by the learned Company Judge in Miscellaneous Civil Application No. 244 of 2006 that, earlier an order was passed on 19-07-2006 by the learned Company Judge in O. L. Report No. 60 of 2006 whereby the learned Company Judge had confirmed the sale in favour of the present appellant for consideration of Rs. 22 Lakhs with respect to Plot No. 207/208/2 situated at GIDC Industrial Estate, Naroda on certain terms and conditions, as per the Tender Form, which have been reproduced in para-4 of the order dated 12-12-2006.

3. As per the earlier order dated 19-07-2006, the offerer had to pay 25% of the purchase consideration within 1 month or within the period as the High Court may stipulate from the date of final acceptance of the particular offer, and the remaining balance amount of purchase consideration had to be paid within 3 months thereafter by the purchaser or within the period which may be fixed by the High Court. It was also made clear that if the purchaser did not pay the balance amount of purchase consideration to the Official Liquidator, as directed by the High Court in its order, then the Official Liquidator had to terminate the same and forfeit the deposit. It was also made clear that if the purchaser failed to pay the purchase money / balance amount and all costs, charges and expenses payable to the vendor within time specified, then also the deposit had to be forfeited. It was also made clear that deficiency in price, if any, occasioned by such second sale and all cost charges and expenses occasioned by such subsequent sale or attempted sale with interest thereon, as may be fixed by the High Court from the date of confirmation of first sale,

shall be immediately, after such subsequent sale, be made good and paid by the defaulting purchaser.

Instead of complying with the aforesaid clear cut terms and conditions, admittedly, the appellant committed breach of it. It is clear from the order passed by the learned Company Judge that, as per earlier order dated 19-07-2006 passed by the learned Company Judge in O. L. Report No. 60 of 2006, the appellant received communication dated 28-07-2006 from the office of the Official Liquidator, informing that the appellant was required to pay an amount of Rs. 22 Lakhs on different dates, beginning from 19-08-2006 ending on 19-11-2006 after adjusting EMD amount of Rs. 75,000/-.

4. Admittedly, the appellant had committed breach of the terms and conditions of the earlier order passed by the High Court and deposited an amount of Rs. 5,25,000/- for the first time on 13-11-2006 and undertook to deposit the remaining outstanding amount on or before 19-12-2006 and prayed for extension of time to deposit full consideration

on or before 19-12-2006 instead of 19-11-2006 in Miscellaneous Civil Application No. 244 of 2006. However, the learned Company Judge rejected the said application; firstly, on the ground that the appellant was required to deposit 25% of the sale consideration on or before 19-08-2006 and the balance 75% amount on or before 19-11-2006. Instead, it deposited the first instalment of Rs. 5,25,000/- only on 13-11-2006 after a period of almost 3 months. Thus, not only there was breach of terms and conditions of sale, but also non-compliance of the order passed by the High Court at the time of confirmation of sale in favour of the appellant. Secondly, the excuse, which was sought to be given by the appellant for such a gross delay in paying the first instalment, was that there was heavy rains and because of that, they suffered huge loss. The learned Company Judge brushed aside that excuse by saying in his order that it was too vague. Having so observed in para-4 of this order, the learned Judge proceeded to make further observations that, in case such a prayer is granted, then in other cases also, people will come with such type of prayer. Having

observed this, the learned Judge has stated that they can still contend that if the time is extended, in that case, they would offer to pay even more than Rs. 22 Lakhs.

5. Under the circumstances, when there was breach of terms and conditions of the order passed by the learned Company Judge and because of that, if the learned Company Judge had refused to grant any extension, then certainly this Court in appeal cannot interfere with such order.

6. In view of the above discussion, this appeal fails and is hereby summarily dismissed.

[B. J. SHETHNA, J.]

[H. B. ANTANI, J.]

/shamnath